

ESTTA Tracking number: **ESTTA671964**

Filing date: **05/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BBK Tobacco & Foods, LLP d/b/a HBI International
Granted to Date of previous extension	05/13/2015
Address	3401 W Papago Street Phoenix, AZ 85009 UNITED STATES
Correspondence information	Brendan N. Mahoney, Esq. General Counsel BBK Tobacco & Foods, LLP 3401 W Papago Street Phoenix, AZ 85009 UNITED STATES legal@hbiin.com Phone:602-374-7482

Applicant Information

Application No	86358122	Publication date	01/13/2015
Opposition Filing Date	05/13/2015	Opposition Period Ends	05/13/2015
Applicant	Bay Game Inc. 1721 64th Street Emeryville, CA 94608 UNITED STATES		

Goods/Services Affected by Opposition


Class 034. First Use: 2011/01/29 First Use In Commerce: 2011/10/15
All goods and services in the class are opposed, namely: Smokeless cigarette vaporizer pipe; smokeless cigar vaporizer pipes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3264128	Application Date	09/22/2006
Registration Date	07/17/2007	Foreign Priority Date	NONE
Word Mark	TRIP		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2006/01/15 First Use In Commerce: 2006/01/22 Cigarette papers; Cigarette rolling papers; Cigarette tubes; Cigarette-rolling machines; Tobacco

Related Proceedings	Trippy, Serial No. 86359589
---------------------	-----------------------------

Attachments	77005774#TMSN.png(bytes) THE TRIPPY STIX opposition.pdf(113793 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brendan N. Mahoney/
Name	Brendan N. Mahoney, Esq.
Date	05/13/2015

1. Opposer is the current owner of the following U.S. Patent and Trademark Office (“PTO”) registrations for the following trademarks (collectively "Opposer's Registered Marks"):

Mark Class and Related Goods	Application Date Dates of First Use	Registration Number and Date
TRIP® 034 - Cigarette papers; Cigarette rolling papers; Cigarette tubes; Cigarette-rolling machines; Tobacco	Application Sep. 22, 2006 First Use Jan. 15, 2006	Reg. No. 3264128 Registered July 17, 2007 Serial No. 77005774

2. Opposer uses, and has used, and continues to use Opposer's Registered Marks to identify the goods identified in the registrations for Opposer's Registered Marks.

3. Opposer itself, or through its predecessor, has used, Opposer's Registered Marks in U.S. interstate commerce for the sale of the goods identified in those registrations since at least January 2006..

4. Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of Applicant's Mark.

5. Applicant's Mark was published for opposition in the Official Gazette of January 13, 2015.

6. Applicant's Mark contains word elements that are identical or closely similar to the Opposer's Registered Marks.

7. Applicant's Mark duplicates distinctive characteristics of the Opposer's Registered Marks.

8. Applicant's Mark creates an overall commercial impression identical to Opposer's Registered Marks.

9. Applicant's Mark is confusingly similar to Opposer's Registered Marks.

10. Applicant's Mark is used in connection with the sale of goods that are identical to, or related in some manner to, goods that are identified in the PTO registrations for Opposer's Registered Marks and that are sold by Opposer using Opposer's Registered such that the goods are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source

11. Applicant's Mark creates the immediate and erroneous suggestion and impression that goods sold under Applicant's Mark are goods that originate with, are endorsed by, are compatible with, or are otherwise connected to Opposer.

12. Upon information and belief, the goods, identified in the application for Applicant's Mark, are and will be marketed under conditions such that they are likely to be encountered by the same purchasers of Opposer's goods, sold using Opposer's Registered Marks, and under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that the goods originate from the same source.

13. Upon information and belief, the customers of and the channels of distribution employed by Opposer and Applicant are likely to be similar, even overlapping, adding to the likelihood that the goods sold by Applicant under Applicant's Mark will be confused with the Opposer's goods, sold using Opposer's Registered Marks.

14. Upon information and belief, the classes of purchasers to whom Opposer and Applicant will sell will be the same, adding to the likelihood that consumers intent on purchasing Opposer's goods sold using Opposer's Registered Marks will purchase Applicant's goods sold under the Applicant's Mark under the mistaken impression that they originate with, are endorsed by, or are otherwise connected to Opposer.

15. The similar nature of the marks themselves, the related goods and the trade channels and customers for those goods are so great as to create a likelihood of confusion among consumers as to the source of Applicant's goods or Applicant's affiliation or relationship with, or sponsorship by, Opposer.


16. Such confusion resulting from Applicant's intended use and the requested registration of Applicant's Mark, will damage Opposer.

17. Applicant's Mark should be barred from registration, pursuant to 15 U.S.C. § 1052(d), because Applicant's Mark consists of a mark which so resembles Opposer's Registered Marks in use in U.S. interstate commerce, that Applicant's Mark is likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

18. WHEREFORE, Opposer requests that its Opposition be sustained, that the registration of Applicant's Mark be refused, and that Application Serial No. 86358122 be rejected.

Dated this 13th day of May, 2015.

BBK TOBACCO & FOODS, LLP


Brendan N. Mahoney, Esq.
3401 West Papago Street
Phoenix, Arizona 85009

GENERAL COUNSEL FOR OPPOSER

CERTIFICATION

I certify that a copy of the foregoing Petition for Cancellation was sent this 13th day of May, 2015 via United States mail, postage prepaid, to:

Bay Game Inc.
Owner Address:
1721 64th Street
Emeryville, CA 94608

Courtesy copy to:

KATHERINE M. BASILE
Novak Druce Connolly Bove Quigg Llp
21771 Stevens Creek Blvd Ste 100
Cupertino, CA 95014-1175

And via e-mail to
tmdocket@novakdruce.com



Brendan N. Mahoney, Esq.